

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**PAIGE CARTER, Special  
Administrator of the ESTATE OF  
KEVEIN C. CARTER, Deceased,**

**Plaintiff,**

v.

**SCOTT FRAKES, Former Director  
of the Nebraska Department of  
Correctional Services, in his  
individual capacity; MICHELE  
WILHELM, Warden of Nebraska  
State Penitentiary, in her  
individual capacity; DR. HARBANS  
DEOL, Former Medical Director for  
Nebraska Health Services, in his  
individual capacity; SHELBY  
BARRAGAN-LOPEZ, in her  
individual capacity; MICHAEL  
MCCANN, in his individual  
capacity; CHARICE TALLEY, in her  
individual capacity; JEFFERY  
REED, in his individual capacity;  
DOUGLAS HEMINGER, in his  
individual capacity; MATT  
HECKMAN, in his individual  
capacity; FRANKLIN HOWARD, in  
his individual capacity; KIM  
MCGILL, in her individual  
capacity; and JOHN/JANE DOES 1-  
6, all employees of Nebraska State  
Penitentiary, in their individual  
capacities,**

**Defendants.**

**Case No: 8:23-cv-485**

**AMENDED ANSWER TO FIRST  
AMENDED COMPLAINT**

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COME NOW Defendants Kimberly McGill, Michael McCann, Douglas Heminger, Jeffery Reed, Franklin Howard, Matt Heckman and Shelby Barragan-

Lopez (collectively “Defendants”), pursuant to Fed. R. Civ. P. 15(a)(1)(A), for their Amended Answer to the Plaintiff’s First Amended Complaint (“FAC”) and aver as follows:

1. Admit.
2. Admit.
3. Defendants are without sufficient knowledge to admit or deny this allegation.
4. Admit.
5. Admit.
6. Admit that Defendants Frakes and Wilhelm do make policy for the Nebraska State Penitentiary (“NSP”). Deny that Defendants Frakes or Wilhelm made any decisions in regard to subject matter of the FAC.
7. Admit.
8. Admit.
9. Admit.
10. Admit.
11. Admit.
12. Admit.
13. Admit.
14. Admit.
15. Admit.
16. Defendants are without sufficient knowledge to admit or deny this allegation.
17. Admit.
18. Deny.
19. Admit.

20. Admit.
21. Defendants are without sufficient knowledge to admit or deny this allegation.
22. Admit.
23. Admit.
24. Admit.
25. Admit.
26. Admit.
27. Admit.
28. Deny.
29. Admit.
30. Deny.
31. Deny.
32. Deny.
33. Admit that Angelo Bol was placed on an involuntary medication order. Deny the remainder of this paragraph.
34. Admit.
35. Admit as to the misconduct reports. Deny the remainder of this paragraph.
36. Defendants are without sufficient knowledge to admit or deny this allegation.
37. Deny.
38. Deny.
39. Deny.
40. Deny.
41. Deny.
42. Deny.
43. Deny.

- 44. Deny.
- 45. Deny.
- 46. Deny.
- 47. Deny.
- 48. Deny.
- 49. Deny.
- 50. Deny.
- 51. Deny.
- 52. Deny.
- 53. Deny.
- 54. Deny.
- 55. Deny.
- 56. Deny.
- 57. Deny.
- 58. Deny.
- 59. Deny.
- 60. Deny.
- 61. Deny.
- 62. Deny.
- 63. Deny.
- 64. Deny.
- 65. Deny.
- 66. Deny.
- 67. Defendants are without sufficient knowledge to admit or deny this allegation.
- 68. Deny.

69. Admit that Bol killed Kevin Carter. The remainder of this paragraph is denied.
70. Deny.
71. Deny.
72. Deny.
73. Deny.
74. Deny.
75. Admit.
76. Admit.
77. Admit.
78. Deny.
79. Deny.
80. No response required.
81. Deny.
82. Deny. Deny subparts a through h.
83. Deny.
84. Deny.
85. Deny.
86. Deny.
87. Deny.
88. Defendants do not request a jury trial.

### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. Defendants are immune from suit under the doctrine of qualified immunity.

3. Plaintiff's claims and lawsuit are barred by the statute of limitations.

4. All conduct attributed to the Defendants, to the extent it occurred, was done in good faith.

5. Plaintiff failed to exhaust administrative remedies prior to filing suit in accordance with applicable state law or regulations.

6. At all relevant times, the Defendants acted in good faith, without malice, and without the requisite state of mind necessary for the Plaintiff to establish liability for the violation of any federal right.

7. The Defendants did not act with deliberate indifference to the Plaintiff's health and safety.

8. The Defendants did not know of and disregard a serious risk of harm to the Plaintiff.

9. The Defendants did not engage in any conduct that caused Plaintiff to suffer a serious medical, dental, or mental health condition or aggravate or worsen an existing serious medical, dental, or mental health condition.

10. The Defendants have not fallen below the applicable standard of care in protecting to the Plaintiff.

11. The Defendants hereby place the Plaintiff on notice that the Defendants will raise the following affirmative defenses, as set forth in Fed. R. Civ. P. 8(c)(1), should subsequent discovery disclose facts that support such defenses, including, but not limited to: assumption of risk, contributory negligence, fraud, illegality, laches, payment, release, res judicata, and waiver.

WHEREFORE, the Defendants pray that the Plaintiff takes nothing by reason of this suit and respectfully request that the Court enter judgment in favor of the Defendant, dismiss the Complaint with prejudice, and grant the Defendant any other and further relief that the Court deems just and proper.

DATED this 4<sup>th</sup> day of March 2024.

**KIMBERLY McGILL, MICHAEL MCCANN,  
DOUGLAS HEMINGER, JEFFERY REED,  
MATT HECKMAN, FRANKLIN HOWARD,  
SHELBY BARRAGAN-LOPEZ each in his or  
her individual capacity, Defendants.**

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BY: s/ Joseph Messineo  
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*Attorneys for Defendant*

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2024, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, causing notice of such filing to be served upon all parties registered on the CM/ECF system as follows:

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